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Overview of Criminal Fine and Fee System

PRESENTED TO:

Senate Budget Subcommittee No. 5 on
Corrections, Public Safety, Judiciary, Labor and
Transportation
Hon. María Elena Durazo, Chair



LEGISLATIVE ANALYST'S OFFICE

Overview of Handout

- During court proceedings, trial courts typically levy fines and fees upon individuals convicted of criminal offenses (including traffic violations). These assessments are known collectively as criminal fines and fees.
- This handout provides an overview of how criminal fines and fees are assessed, collected, and distributed. It then discusses recent and proposed actions to address declines in criminal fine and fee revenue as well as to reduce impacts of the fines and fees upon individuals.



How Are Criminal Fines and Fees Assessed?

Various Fines and Fees Substantially Add to Base Fines

As of January 1, 2021

How Charge Is Calculated		Stop Sign Violation (Infraction)	DUI of Alcohol/Drugs (Misdemeanor)
Standard Fines and Fees			
Base Fine	Depends on violation	\$35	\$390
State Penalty Assessment	\$10 for every \$10 of a base fine ^a	40	390
County Penalty Assessment	\$7 for every \$10 of a base fine ^a	28	273
Court Construction Penalty Assessment	\$5 for every \$10 of a base fine ^a	20	195
Proposition 69 DNA Penalty Assessment	\$1 for every \$10 of a base fine ^a	4	39
DNA Identification Fund Penalty Assessment	\$4 for every \$10 of a base fine ^a	16	156
EMS Penalty Assessment	\$2 for every \$10 of a base fine ^a	8	78
EMAT Penalty Assessment	\$4 per conviction	4	4
State Surcharge	20% of base fine	7	78
Court Operations Assessment	\$40 per conviction	40	40
Conviction Assessment Fee	\$35 per infraction conviction and \$30 per felony or misdemeanor conviction	35	30
Night Court Fee	\$1 per fine and fee imposed	1	1
Restitution Fine	\$150 minimum per misdemeanor conviction and \$300 minimum per felony conviction	—	150
Subtotals		(\$238)	(\$1,824)
Examples of Additional Fines and Fees That Could Apply			
DUI Lab Test Penalty Assessment	Actual costs up to \$50 for specific violations	—	\$50
Alcohol Education Penalty Assessment	Up to \$50	—	50
County Alcohol and Drug Program Penalty Assessment	Up to \$100	—	100
Subtotals		(—)	(\$200)
Totals		\$238	\$2,024

^a The base fine is rounded up to the nearest \$10 to calculate these additional charges. For example, the \$35 base fine for a failure to stop would be rounded up to \$40.
DUI = Driving Under Influence; EMS = Emergency Medical Services; and EMAT = Emergency Medical Air Transportation.

- The total amount owed by an individual begins with a base fine set in statute for each criminal offense. State law then requires courts add certain charges. In some cases, counties and courts can levy additional charges depending on the specific violations and other factors. Individuals may request courts adjust the amount owed based on their ability to pay. Statute gives judges some discretion to reduce the total amount owed by waiving or reducing certain charges.



How Have Fine and Fee Levels Changed Over Time?

Total Fine and Fee Level for Stop Sign Violation Has Increased Significantly Since 2005^a

	Stop Sign Violation (Infraction)		
	2005	2021	Change
Base Fine	\$35	\$35	—
State Penalty Assessment	40	40	—
County Penalty Assessment	28	28	—
Court Construction Penalty Assessment	20	20	—
Proposition 69 DNA Penalty Assessment	4	4	—
DNA Identification Fund Penalty Assessment	—	16	\$16
EMS Penalty Assessment	—	8	8
EMAT Penalty Assessment	—	4	4
State Surcharge	7	7	—
Court Operations Fee	20	40	20
Conviction Assessment Fee	—	35	35
Night Court Fee	1	1	—
Totals	\$155	\$238	\$83

^a Depending on the specific violation and other factors, additional county or state assessments may apply.
EMS = Emergency Medical Services and EMAT = Emergency Medical Air Transportation.

- **Total Fine and Fee Levels Have Increased Significantly.** Since 2005, the number and size of charges added to the base fine have increased significantly—resulting in increases in the total amount owed by individuals convicted of criminal offenses. As shown in the figure, the total penalty for a stop sign violation has increased by 54 percent since 2005.
- **Fine and Fee Levels Set to Serve Multiple Purposes.** The state has enacted various fines and fees for multiple purposes. Some (such as the base fine) are generally tied to the seriousness of the crime. Others (such as the DNA assessments) were enacted to generate revenue to fund specific activities. Finally, some were enacted to help offset state or local costs for providing particular services to individuals paying the specific charge.



How Are Fines and Fees Collected?

- **Counties and Courts Involved in Collection Process.** Counties are statutorily responsible for collecting fine and fee payments. However, some collection duties are often delegated back to the courts. As a result, collection programs may be operated by both courts and counties. Programs can collect the amount owed themselves as well as contract with private collection vendors or the Franchise Tax Board (FTB) Court-Ordered Debt Collection Program.
- **Various Collection Tools Employed.** Individuals who choose not to contest a violation, plead guilty, or are convicted of a criminal offense must either provide full payment immediately or set up installment payments with the collection programs. Collection programs employ various tools—such as monthly billing slips or payment kiosks—to help individuals make timely payments.
- **Various Sanctions Available.** If an individual does not pay on time, the amount owed becomes delinquent. Under state law, collection programs can begin utilizing sanctions against an individual who fails to pay the amount owed (or appear in court without good cause) 20 calendar days following notification of delinquency. Collection programs can vary in how and when these sanctions are used, but typically add sanctions progressively to gradually increase pressure on individuals to make payments. Two common sanctions include imposing (1) a civil assessment of up to \$300 for failing to pay (or appear without good cause) and (2) wage garnishments and bank levies.
- **Amount Outstanding.** The judicial branch reports \$8.6 billion in fines and fees remained outstanding at the end of 2019-20.



How Is Fine and Fee Revenue Distributed?

- ***Numerous Funds Eligible to Receive Fine and Fee Revenue.*** Over 50 state funds—in addition to many local funds throughout the state—are eligible to receive fine and fee revenue. However, some of these funds receive very little revenue, such as those that only receive revenue from fines and fees for specific offenses that occur infrequently.
- ***Complex Process for Distributing Fine and Fee Revenue.*** State law (and county resolutions for certain local charges) dictates a very complex process for the distribution of fine and fee revenue. State law currently contains over 200 distinct code sections specifying how individual fines and fees are to be distributed to state and local funds, including additional requirements for when payments are not made in full. In order to comply with these requirements, collection programs must carefully track, distribute, and record the revenue they collect.
- ***State Receives Majority of Revenue Distributed.*** We estimate that a total of \$1.7 billion in fine and fee revenue was distributed to state and local governments in 2015-16. (This is the most recent data that we have analyzed.) Of this amount, \$881 million (or roughly half) went to the state and \$707 million (or 42 percent) went to local governments. The remainder went to offset collection program costs related to collecting delinquent payments.
- ***Amount Distributed Has Declined Over Time.*** The total amount of fine and fee revenue distributed to state and local governments has declined since 2010-11. As a result, a number of state funds receiving such revenues have faced funding shortfalls and become insolvent. For example, as of the end of 2019-20, the amount deposited in the State Penalty Fund has decreased by \$92 million (or 54 percent) since revenues to the fund peaked in 2008-09.



Recent and Proposed Actions to Address Declining Fine and Fee Revenue

Shifting Costs

- In the past several years, the state has shifted costs from various funds supported by fine and fee revenues to the General Fund or other funds in different ways. For example, funding support for the Standards and Training for Local Corrections Program was shifted entirely to the General Fund. The 2020-21 budget included \$23.4 million for this program. In another example, the General Fund has provided an annual backfill to the Trial Court Trust Fund, which supports trial court operations, since 2014-15 (including \$183 million for 2020-21).
- The Governor's January budget for 2021-22 proposes various cost shifts, including a \$16 million ongoing General Fund backfill (increasing to \$28.3 million annually in 2022-23) of the DNA Identification Fund that supports forensic services and a \$33 million ongoing General Fund backfill (increasing to \$39.5 million annually in 2022-23) of the Restitution Fund that provides compensation to crime victims.

Reducing Expenditures

- In the past several years, the state has directed certain state entities supported by fine and fee revenue to reduce expenditures. For example, the Commission on Peace Officer Standards and Training was required to reduce expenditures in certain years (such as an \$8 million—or 15 percent—reduction in total funding in 2015-16) and the judicial branch halted 30 fine and fee supported trial court construction projects prior to 2018-19.

Increasing Revenue

- The state has also attempted to increase the amount of fine and fee revenue collected in different ways. For example, the 2017-18 budget package provided one-time and ongoing resources for FTB to increase its fine and fee revenue collection activities.



Recent and Proposed Actions to Address Declining Fine and Fee Revenue

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Other Changes

- In 2017-18, the state eliminated statutory formulas dictating how criminal fine and fee revenues deposited into the State Penalty Fund are distributed. Instead, specific dollar amounts are now appropriated to specific programs in the annual budget based on state priorities.
- The Governor's January budget for 2021-22 proposes to consolidate the judicial branch's two construction accounts to delay the need to address the insolvency of the accounts.



Recent and Proposed Actions to Reduce Impacts of Fines and Fees on Individuals

Online Adjudication and Ability-to-Pay

- The 2018-19 budget package authorized a pilot program through January 1, 2023 to facilitate the online adjudication of certain traffic infractions at a minimum of eight courts and allow individuals to request ability-to-pay determinations. This includes the development of an online adjudication tool that includes an ability-to-pay component that recommends a reduction of at least 50 percent of the total amount of criminal fines and fees due for low-income individuals. The 2018-19 budget also provided \$3.4 million General Fund—declining to \$1.4 million annually in 2019-20—for this pilot program.
- The Governor’s January budget for 2021-22 proposes \$12.3 million General Fund (increasing to \$58.4 million annually beginning in 2024-25) to eliminate the pilot program, expand the online adjudication tool statewide for all infractions and require all courts offer the ability-to-pay component, and backfill the expected reduction in criminal fine and fee revenue.

Eliminating Assessments

- As part of the 2020-21 budget, the assessment and collection of approximately 20 criminal justice administrative fees will be eliminated as of July 1, 2021. The eliminated fees generally pertain to: (1) programs that are alternatives to incarceration (such as work release or electronic monitoring), (2) arrest and booking, and (3) indigent criminal defense. Additionally, \$65 million will be provided annually to counties from the General Fund for five years beginning in 2021-22 to backfill revenues lost due to the elimination of these fees.
- Pursuant to intent language included in the 2020-21 budget package, the administration and Legislature are currently in the process of finalizing the methodology to allocate the \$65 million backfill to counties.



Recent and Proposed Actions to Reduce Impacts of Fines and Fees on Individuals

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Other Actions

- **2015 Traffic Amnesty Program.** As part of the 2015-16 budget package, the Legislature authorized an 18-month traffic amnesty program for delinquent debt. Under the program, eligible individuals who began paying the amount they owed had their civil assessments waived, the total amount they owed reduced by 50 percent (80 percent for those who are low-income), and their drivers' licenses reinstated (if previously suspended).
- **Elimination of Collection Sanctions.** The 2017-18 budget package eliminated collection programs' ability to use driver's license holds and suspensions as a collection sanction for individuals who fail to pay their criminal fines and fees.

